

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell
(U 1001 C) for Authority Pursuant to Public
Utilities Code Section 851 to Lease Space and
Transfer Assets to SBC Services, Inc.

Application 99-07-020
(Filed July 13, 1999;
amended October 13, 1999
and February 3, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
ASKING PARTIES TO UPDATE DRAFT PROPOSED DECISION**

In 1999 and 2000, Pacific Bell Telephone Company (now SBC California) sought authority to lease space in 155 different California locations and to transfer approximately \$878 million in computer hardware, office equipment and other assets to SBC Services, Inc., an affiliate company organized to perform administrative tasks. Most of the transfer of property had taken place in early 2000 under General Order 69-C revocable license authority, and the application was intended to make the transfers permanent under Pub. Util. Code § 851.

A draft proposed decision approving the application with a number of conditions was completed in July 2000, but its processing was deferred in part because the Commission was confronting other matters during the energy crisis. The draft proposed decision, which was never issued, is attached to this ruling.

The Commission is now ready to act on this application. This ruling requests that parties to this matter review the draft proposed decision and, within 45 days, submit comments that address the following issues:

- Comment on whether the application should be withdrawn because of changed circumstances and the

passage of time. If the application is withdrawn, comment on whether the applicant should be directed to file an updated application for Section 851 approval of this transfer.

- If the application is not withdrawn, specify what factual text in the draft proposed decision should be revised and updated because of changed circumstances and the passage of time. For example, have any of the conditions proposed in the draft proposed decision become unnecessary because of actions taken by the Commission in other proceedings?
- If the application is not withdrawn, state whether the record should be reopened for additional hearing. State the reasons for your recommendation on reopening and additional hearing.

The Commission does not at this time seek comments on the conclusions reached in the draft decision. Parties will have an opportunity to make substantive comments and recommendations if and when the draft proposed decision is revised and updated and, at that time, circulated for comment. This ruling seeks only to determine whether the draft proposed decision can and should be revised and updated to correct any changed circumstances or changes caused by the passage of time. For example, an updated draft decision should note that Pacific Bell Telephone Company is now SBC California.

Comments responsive to this ruling should be filed on or before 45 days from the date of this ruling. Reply comments are not contemplated.

IT IS RULED that parties to this proceeding are asked to file comments responsive to this ruling within 45 days of the date of this ruling.

Dated February 2, 2004, at San Francisco, California.

/s/ Glen Walker

Glen Walker
Administrative Law Judge

(ATTACHMENT)

Decision _____

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(See Appendix A for List of Appearances.)

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Summary

Pacific Bell Telephone Company (Pacific) seeks authority to lease space in 155 different California locations and to transfer approximately \$878 million in computer hardware, office equipment and other assets to SBC Services, Inc. (SBC Services), an administrative affiliate of Pacific and an unregulated subsidiary of Pacific's parent company, SBC Communications Inc. (SBC). Pacific already has transferred some 5,000 employees to SBC Services to perform administrative functions for Pacific and for other telephone company subsidiaries of SBC. The application has been protested by five parties, including the Commission's advocacy group. This decision approves the transfers, but it imposes conditions intended to track and correct any subsequent deterioration in service to California consumers, to provide further assurance of nondiscriminatory access to local exchange competitors, and to fortify discovery rights of parties in consumer fraud cases. That part of the application seeking approval of future transfer of leased space without Commission review is denied.

Background and Jurisdiction

Pacific filed this application on July 13, 1999, seeking to lease space and transfer assets involving numerous support functions to SBC Services, which would consolidate support functions previously performed internally by Pacific, Nevada Bell, Southwestern Bell Telephone Company, Ameritech, Southern New England Telephone Company and other affiliates. Pacific also seeks authority to shift the leased space to other support affiliates in the future without the necessity of further Commission approval.

Pacific is California's largest telecommunications company and is regulated by this Commission. Its application to lease space and transfer assets

is made pursuant to Section 851 of the Public Utilities Code (Pub. Util. Code), which states in pertinent part:

No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void....

Protests to the application were filed by the Office of Ratepayer Advocates (ORA), which expressed concern about the valuation of the assets and the effect of the transfers on Pacific's billing services; by The Utility Reform Network (TURN), which stated that the transfer of billing and other services to a non-regulated affiliated would impede scrutiny of those services; and jointly by MCI WorldCom¹ and AT&T Communications of California, Inc. (WorldCom/AT&T), which are concerned with Pacific's obligation to provide operations support to telephone companies with which Pacific competes.

At a prehearing conference conducted on September 22, 1999, Pacific agreed to amend its application on an expedited basis to provide additional information responding to questions raised by other parties and by the Administrative Law Judge. The amended application was filed on October 13, 1999. Protests were filed again by ORA, TURN, and WorldCom/AT&T, and by The Greenlining Institute and Latino Issues Forum

¹ MCI WorldCom changed its name to WorldCom effective May 1, 2000.

(collectively, Greenlining). Greenlining is concerned that records and personnel of SBC Services will not be available for examination in consumer fraud cases.

A second prehearing conference was conducted on October 29, 1999, at which time parties agreed on dates for an exchange of written testimony and on dates for an evidentiary hearing. The evidentiary hearing was conducted over four days on March 21 through 24, 2000. At hearing, the Commission heard from four witnesses for Pacific, six for ORA, two for TURN and one each for WorldCom/AT&T and Greenlining, and it received 35 exhibits into evidence. The matter was deemed submitted for Commission decision on May 8, 2000, upon receipt of final briefs.

Nature of Application

Pacific seeks authority to lease space in 155 of its locations and to transfer \$878 million in computer hardware, office equipment, third-party software licenses and other assets to SBC Services. The support functions include information technology and billing support, real estate support, procurement support, human resources support, and training services. Previously, these support functions were provided to Pacific through its internal operations and by various affiliates.

As part of the consolidation, approximately 5,000 Pacific employees (about 3,500 of them in Pacific's computer support and billing organizations) who performed these functions have been transferred to SBC Services. Pacific takes the position that Commission approval of the employee transfers is unnecessary, since Section 851 of the Pub. Util. Code requires prior approval only of transfers of "property."

In fact, as disclosed at hearing, the transfer of space and property, as well as employees, has already taken place. Pacific witness Marty R. Webb, executive

director of financial planning for SBC Services, confirmed that the transfer of all of the assets and space for which approval is sought here took place on or about January 1, 2000, as part of a major consolidation of support services, called “Project 2000,” by SBC, the parent company.² Pacific states that its transfers were made pursuant to General Order (G.O.) 69-C, which permits a utility to grant revocable licenses for limited uses of utility property without further authorization by the Commission. Webb testified that the property and space all were transferred under revocable licenses and leases, but that Section 851 approval is sought to make the transfers permanent.

SBC Services is an unregulated subsidiary of SBC, headquartered in San Antonio, Texas, and is made up of about 14,000 employees transferred from SBC-owned companies that previously provided the support functions. According to Pacific, in most cases, these support organizations were managed on a corporate-wide basis, and the next logical step was to merge the organizations into one entity. Pacific states that there are no specific plans to permanently transfer any of the current operations from California to other states. In summary, the transfer will affect the following Pacific functions:

a. Information Technology and Billing Support Services

Pacific’s internal information technology and billing support services organizations consisted of approximately 3,500 Pacific employees. Within SBC Services, this organization is comprised of approximately 9,300 employees, including the Pacific employees.

² According to an SBC web page announcement (Exhibit 25, p. FWF-9): “SBC initiated Project 2000 to move people and assets that support multiple SBC businesses into a single and unregulated entity. Assuming timely regulatory approvals, the new entity, called SBC Services, Inc., will be effective January 1, 2000. It will include about 14,000 employees...”

Information technology services include such functions as software development and maintenance, data center operations, PC desktop support and internal communications management. Billing support services include investigation and correction of bills, bill printing and mailing, processing of customer fraud complaints, payment processing, and billing system applications. The billing services were being provided to Pacific by its internal billing support organization and under an affiliate transaction agreement by a Pacific affiliate.

b. Real Estate Support Service

Pacific's internal real estate organization consisted of 345 Pacific employees. Within SBC Services, this organization is comprised of some 950 employees transferred from various affiliates within the eight states covered by SBC. Of the 950 employees, approximately 375 are currently located in California. Real estate support services include building repair and maintenance, real estate design and construction management, real estate billing transactions, space planning, real estate support systems, and furniture administration.

c. Procurement Support Services

Pacific's internal procurement support services organization had 510 employees. Within SBC Services, this organization has 1,900 employees, about 660 of whom are located in California. Procurement support includes contract management and supplier selection, purchasing operations, fleet management and vehicle maintenance, materials warehousing and inventory management, internal mail services, and copy bureau and graphics design services.

d. Human Resources Support Services

Pacific's internal personnel organization had 300 employees. Within SBC Services, the organization will be comprised of some 1,100 employees, including 490 currently located in California. Human resources

support services include recruiting and hiring, workforce development, benefit administration, absence management, and labor relations and negotiations.

e. Training Services

Pacific's internal training support services were provided by 80 employees. In SBC Services, training services will include 475 employees, about 250 of whom are currently located in California. Training support services include course development and employee training.

Pacific has attached exhibits to its application with further details of the proposed lease and transfer arrangements. Exhibit A identifies leased space. Exhibit B identifies the computer hardware, office equipment and other assets that are transferred. Exhibit C is a chart detailing Pacific's property management billing process. Exhibit D contains Pacific's Operating Practice 125, which describes affiliate transaction policies and procedures that are to be followed in these transactions. Exhibit E contains a General Services Agreement between Pacific and SBC Services, specifying the terms and conditions under which services are provided. Exhibit F is an example of the agreements governing leased space.

Pacific states that the permanent lease of space and transfer of assets will be under affiliate transaction agreements that comply with the Commission's decisions and federal requirements governing affiliate transactions, including accounting directives.³ For example, the Commission's affiliate transaction rules require that Pacific be compensated for employee knowledge, skills and abilities through payment of a 25% transfer fee. Pacific will receive approximately \$47 million for the transfer of 5,000 employees to SBC Services. For space leases,

³ See e.g., Decision (D.) 86-01-026, 20 CPUC2d 237 91986); D.87-12-067, 27 CPUC2d 1.

SBC Services is to pay Pacific the fully distributed cost plus 10%, or market price, whichever is higher. For the sale of assets, Pacific will receive the higher of market price or net book value plus incremental transaction costs. Pacific estimates the value of its support service assets at \$878 million.

Pacific states that oversight of these affiliate transactions is centralized in the SBC Affiliate Oversight Group, which includes employees of Pacific, Southwestern Bell Telephone and Southern New England Telephone. Billing information and other data concerning affiliate transaction are filed with the Commission in compliance with Rulemaking (R.) 93-08-008. In addition, the FCC requires reporting of such transactions and an annual attestation audit of such transactions by an independent audit firm.

Justification for the Transfer

Pacific's witnesses state that the consolidation of these support functions will enable the company to share the cost of these operations with other organizations and to avoid duplicate services. Pacific's witnesses stated that, prior to consolidation, internal support organizations were managed on a corporate-wide basis across boundaries of the SBC subsidiaries. This required numerous affiliate contracts and made it difficult to track and manage costs. Pacific's witnesses stated that consolidating the support services in one organization simplifies affiliate billing and internal cost tracking and increases efficiency.

On brief, Pacific argues that when the merger of the Pacific Telesis Group and SBC was approved in 1997, the Commission assumed that Pacific would be able to achieve cost reductions by eliminating duplication, through economies of

scale, and by implementing shared best practices.⁴ It was on this basis, Pacific states, that the Commission ordered refunds of \$286 million to Pacific's ratepayers through the year 2002. According to Pacific, the consolidation of support services is a step that will allow management an opportunity to realize some of the cost reductions envisioned at the time of merger.

Pacific acknowledges that personnel and assets previously serving only Pacific are now serving numerous SBC affiliates, but Pacific points out that the personnel and assets of those other affiliates consolidated into SBC Services are now available to serve Pacific.

Issues Considered in This Decision

Contested issues in this application were stated in a Scoping Memo issued on November 5, 1999, and were further honed during the course of this proceeding. Generally, the issues considered by the parties include the following:

- Should approval of the application include conditions aimed at detecting and addressing service quality problems that may result from the transfer?
- Should the Commission direct that the transfers be valued as a "going concern," with refunds to ratepayers of the difference between a going concern value and the net book value of the transferred assets?
- Should approval of the application include conditions that require SBC Services to be subject to the same discovery rules as Pacific?
- Are conditions required to ensure that competitive carriers are not disadvantaged in their access to Operations Support Systems of Pacific?

⁴ Re Pacific Telesis Group (1997) 71 CPUC2d 351, 377, 416.

- Should Pacific be permitted, without Section 851 approval, to lease space to an affiliate other than SBC Services if that affiliate assumes the same support functions of SBC Services?

Limited Use Transfers

Pub. Util. Code § 851 requires Commission authorization before a utility may lease or transfer utility property. The purpose of the section is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action as a condition of the transfer as the public interest may require.⁵

Here, Pacific has already made all of the leases and transfers for which approval is sought in this application. It has done so through short-term license agreements, relying on this Commission's G.O. 69-C,⁶ which states in pertinent part:

[A]ll public utilities covered by the provisions of Section 851 of the Public Utilities Code of this State...are hereby authorized to grant easements, licenses or permits for use or occupancy on, over or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and service of such public utilities to and for their several patrons or consumers.

Pacific's witness explained at hearing that review of this Section 851 application was taking longer than anticipated, and the company decided to

⁵ Re Pacific Bell, D.98-07-006, *slip op.* at 5, citing San Jose Water Co. (1916) 10 CRC 56.

⁶ Easements on Property of Public Utilities Resolution No. L-230, adopted July 10, 1985; effective July 10, 1985.

proceed on the basis of revocable licenses in order to avoid “a fairly significant cost” of not proceeding by January 1, 2000.⁷ Asked why the Commission could not simply dismiss this application and permit these transactions to continue under revocable licenses, Pacific’s witness stated that the company seeks permanency in transferring the support functions.

On brief, only Greenlining objects to the manner in which Pacific was carrying out the requested transfers, and its complaint goes primarily to the unilateral transfer of virtually all of Pacific’s billing department employees. Pacific argues that employee transfers have never been subject to Section 851 review because employees are not “property” covered by the statute. At hearing, ORA’s witness saw no conflict in Pacific’s proceeding under G.O. 69-C so long as the leases and transfers were the subject of revocable licenses. TURN’s witness urged the Commission not to forgo Section 851 review in light of the revocable licenses, since Section 851 permits imposition of conditions on the transfers.

Nonetheless, we are troubled that so massive a transfer of employees, space and assets (roughly 10% of Pacific’s total workforce and close to \$1 billion in assets) took place prior to Commission review. G.O. 69-C contemplates “limited uses” of utility property without advance authorization. While, arguably, each license granted here is limited and revocable, the transactions under G.O. 69-C in total constitute a transfer far more expansive than we have seen in the past. Most Commission cases involving G.O. 69-C involve more limited transactions.⁸

⁷ Transcript, at 171.

⁸ See, e.g., In re Pacific Gas and Electric Company, D.00-01-014, 2000 Cal. PUC LEXIS 41 (January 6, 2000) (use of transmission poles for fiber optic equipment); In re Pacific Gas and Electric Company, D.99-04-014, Cal. PUC LEXIS 229 (April 1, 1999) (shared use of

Footnote continued on next page

Pacific may have had its own misgivings about the use of G.O. 69-C for so substantial a transfer, since it did not publicly acknowledge that the transfer had already taken place until its witnesses were cross-examined at the evidentiary hearing in March 2000.⁹ Pacific's application, last amended on February 3, 2000, continues to address the transfer of assets and the lease of space to an unregulated affiliate as something that will occur after Commission review. Technically, of course, that is correct, since formal approval of a "permanent" transfer will not take place until this Section 851 application is decided. As a practical matter, however, as Greenlining puts it, the application "seems now to be asking for some *ex post facto* benediction" of what already has been done.¹⁰

With that said, it is clear that all parties except Greenlining appear to concede that Pacific has acted within permissible boundaries in carrying out its Project 2000 transfers and leases. Greenlining's assertion that the employee transfers may not comply with Commission reporting rules is unpersuasive, since in fact the rules in question require an annual report which Pacific states that it will make in a timely manner. Our own research discloses no specific dollar limitation on the use that a utility may make of G.O. 69-C, so long as the use is arguably limited and revocable. We conclude that no remedial action related to the use of G.O. 69-C is warranted on this record. We place Pacific on notice, however, that so expansive a use of the general order procedure is

underground conduit); In re Southern California Edison Company (1996) 69 CPUC2d 30 (shared use of fiber optic cables.)

⁹ Transcript, at 169-71.

¹⁰ Concurrent Post-Hearing Brief of Greenlining at 1.

questionable and may prompt us to reexamine and restrict such use in the future.¹¹

Risk of Deterioration of Service

Pacific's witnesses testified that the consolidation of support services in SBC Services will be largely transparent to customers. For example, although billing support functions are transferred from Pacific, there will be no change in Pacific's bills and no change in the way customers resolve billing issues. Pacific's service representatives, who are not transferring to SBC Services, will continue to serve as a point of contact for residence customers with questions about their bills. Customers who experience fraud in their accounts will continue to contact the California fraud center of the Pacific business office. The only difference, according to the witnesses, is that if additional records or support is required, Pacific's representatives would get it from the consolidated support affiliate rather than from other Pacific employees.

Pacific's witness Webb introduced the General Services Agreement between Pacific and SBC Services in which SBC Services commits that services to Pacific "shall be performed by qualified personnel promptly and with diligence and in a professional manner."¹² The contract states that the support services "shall be equal to or exceed that of like services, which Buyer [Pacific] provided to itself immediately prior to the effective date of this Agreement."¹³

¹¹ Grenlining cites D.93-02-019, Re Reporting Requirements for Electric, Gas and Telephone Utilities Regarding Their Affiliate Transactions (1993) 48 CPUC2d 163, App. A. Pacific makes annual reports each May 1 on reassignment of employees to affiliated entities during the prior calendar year pursuant to D.93-02-019 and Rulemaking (R.) 92-08-008. Reports on the transfers here will be due on May 1, 2001.

¹² Exhibit 19, p. 1 of 6.

¹³ *Id.*

However, ORA's witnesses testified that the fact that Pacific now will have to compete with its sister companies for support services it previously provided in-house portends a deterioration in consumer service. Dale Piiru, an ORA regulatory analyst, testified that, since the 1997 merger with SBC, Pacific's service quality had deteriorated in two important areas affecting ratepayers. Citing FCC reports filed by Pacific, he testified that since the merger, the average time consumers wait for installation of new service has increased by at least 16%, while the average wait for residential repairs has increased by more than 70%. Piiru said that the ORA is unable to audit Pacific's service in these two areas because Pacific does not maintain installation records, and its service quality reports (filed pursuant to G.O. 133-B) do not provide detailed information.

Regina Costa, telecommunications research director for TURN, testified that Pacific's service representatives and technicians rely on the information technology function for the systems and programs that direct provisioning service, including service installations and repairs. If Pacific must compete with other SBC companies for this transferred service, or if it is obliged to accept applications standardized for generic use by SBC companies, Costa contends that service may be compromised. TURN's brief joins ORA in urging that we apply conditions that will permit the Commission to effectively monitor the effects of the transfer on the provisioning and repair of service.

ORA witnesses also criticized the General Services Agreement upon which Pacific states it relies to guarantee quality service from SBC Services. In direct testimony and cross-examination, ORA showed that, under the agreement, SBC Services will be the one that decides if it has provided satisfactory service. Damages to Pacific are limited to the amount that Pacific paid for the service, and SBC Services would pay no part of any penalty levied against Pacific by this Commission for service deficiencies. TURN on brief argues that "it is ludicrous

to expect one subsidiary of SBC to take action against another subsidiary of SBC to enforce obligations under a contract between the two subsidiaries.”¹⁴

Under Pub. Util. Code § 851, the Commission’s duty is to ensure that the lease or transfer of property is in the public interest. That responsibility includes the obligation to attach such conditions on the lease or transfer as the public interest may require.¹⁵ Among considerations the Commission typically has examined in such applications is whether the proposed transaction will benefit customers or leave them indifferent to the change.¹⁶ As in all application proceedings, the applicant, Pacific, bears the burden of proving that its request is consistent with the public interest.

In filing this application, Pacific asserted that it “anticipated” no effect on service quality and that the transfer “could have” a positive effect on customer service.¹⁷ Yet Pacific does not contest ORA’s showing that installation and repair intervals have deteriorated since the SBC merger, nor does Pacific propose any measures to assure us that a massive transfer of support services to an SBC subsidiary will not further affect service quality. We are not convinced that transferring support resources now devoted exclusively to Pacific to an unregulated company supporting SBC companies in eight states will maintain or improve service to Pacific. In this respect, at least, Pacific has failed to meet its burden of showing that so bold a transfer is consistent with the public interest in California.

¹⁴ TURN Reply Brief, at 5.

¹⁵ Re Pacific Bell, D.98-07-006, slip op. at 5.

¹⁶ D.98-07-006, slip op. at 5-6.

¹⁷ Exhibit 25, p. DGP-9.

Accordingly, our decision today conditions our approval of the application on the two conditions recommended by ORA—more detailed recordkeeping and reporting on service quality for residential and small business installations and repairs, and adoption of service performance guarantees similar to those applicable to GTE California, Inc.(GTEC).¹⁸ We believe that these two provisions provide a measure of assurance of service quality that is lacking in Pacific’s application. Performance tracking like the kind ordered here is already performed in five of the seven states with SBC local exchange carriers, so the burden on Pacific should be minimal. On the other hand, if over time this tracking shows a deterioration in service to California consumers, we would expect on our own motion to reconsider whether in-house resources of Pacific should be restored. The service quality guarantees that we require will have no impact if, as represented, Pacific maintains or improves the quality of service now offered.

Preliminarily, our ordering paragraphs as to these conditions track language suggested by TURN and by ORA, but we invite Pacific and other parties in their comments to the proposed decision to suggest changes that will ease administrative burden without diminishing the effectiveness of these provisions.

On brief, Pacific notes, correctly, that this Commission declined to impose stricter service quality standards on any telephone utility in a rulemaking culminating in D.00-03-052,¹⁹ and it argues that it is inappropriate to adopt

¹⁸ See GTEC Tariff Rules No. 18 and No. 19, Advice No. 5521.

¹⁹ Re Order Instituting Rulemaking on the Commission’s Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B, R.98-06-029.

service quality standards in this proceeding when the same or similar standards were not adopted in D.00-03-052. The short answer to that is that the rulemaking did not address a transfer of 10% of Pacific's employees and nearly \$1 billion worth of its resources. The issue here is how to protect Pacific's customers from the increased risk of service quality degradation posed by the transfer of support operations from Pacific to SBC Services. The fact that we did not choose to impose such rules generically on all telecommunications carriers is irrelevant to this company-specific application.

In addition to conditions dealing with installation and repair services, TURN urges that we condition our approval of this application on the establishment of tracking programs for billing complaints and fraud investigation. Here, however, we have no record of current shortcomings, nor are we shown how new tracking requirements will improve or supplement those that Pacific already has in place. The evidence shows that the manner in which Pacific customers report billing errors or fraud, and the Pacific personnel with whom they deal, will be unchanged following the consolidation of support services. A Pacific service representative will continue to pull up a customer's detailed records on a computer screen and deal directly with the customer's problem. On this record, we are unable to conclude that additional monitoring requirements for these functions are necessary.

Valuation of Assets

For purposes of reimbursement from SBC Services, Pacific valued the space and assets in its application based on an item-by-item assessment in a manner approved by the Commission in previous decisions where Pacific has sought to lease space and transfer assets to affiliates.

ORA witness Francis W. Fok, a regulatory analyst, challenged that valuation on grounds that prior applications involved partial transfers of functions, whereas the current application envisions transfers of entire organizations within Pacific. Because of this, he testified that each of the organizations should be valued as a “going concern,” including such intangible assets as the experience and skills of the employees. ORA proposes that Pacific refund to ratepayers the difference between a going concern value and the net book value of the assets transferred to SBC Services.

Pacific through its witnesses contended that there are numerous cases in which the Commission approved transfer or lease of space and assets used internally by Pacific for administrative support to an administrative affiliate that would then perform those same support functions for Pacific and other affiliates. In each of those cases, valuations were based on affiliate transaction requirements.²⁰

Under the Commission’s affiliate transaction rules, the space leases proposed in Pacific’s application must be priced at the higher of fully allocated

²⁰ Application of Pacific Bell for Authority Pursuant to Public Utilities Code Section 851 to Transfer and/or Lease Assets Used for Research and Development to Technology Resources, Inc. (1998) D.98-07-006 (granting Pacific authority to lease or transfer assets used for research and development to an administrative affiliate, Technology Resources, Inc.); Application of Pacific Bell for Authority Pursuant to Public Utilities Code Section 851 to Lease Space to PTG and PTLG (1998) D.98-03-019 (granting Pacific authority to lease space to affiliates providing support services to Pacific and other affiliates); Application of Pacific Bell for Authority Pursuant to Public Utilities Code Section 851 to Lease and/or Transfer Assets to Administrative Affiliates (1998) D.98-02-005 (granting Pacific authority to lease space to affiliates providing support services to Pacific and other affiliates); Application of Pacific Bell for Exemption or Authority Pursuant to Public Utilities Code Section 851 for the Lease and Sale of Assets to Pacific Telesis and Affiliates (1997) (granting Pacific authority to lease and sell assets to affiliates providing support services to Pacific and other affiliates).

cost plus 10%, or fair market value.²¹ Affiliate transaction rules call for sales of assets to be priced based on the higher of net book value or fair market value.²²

Pacific witness Kathleen Larkin, a regulatory director responsible for analyzing the transactions in this case, testified that the fair market value of the proposed leases was based on market value studies performed by independent firms specializing in commercial property leases. She stated that the fair market value of capital assets was determined by independent third parties through the higher of a cost approach, estimating reproduction cost less depreciation, or a market approach, comparing sales in the marketplace.

ORA argues that these valuations are inappropriate here. According to its witnesses, the massive transfer contemplated here resembles the 1990 transfer of Pacific's Information Services Group (ISG), a department within the company, to Pacific Bell Information Services (PBIS). In approving the transfer, the Commission ordered that the ISG be valued as a going concern, in part because the department had been developed using ratepayer funding.²³

The PBIS case, however, is distinguishable. As Pacific points out, that case did not involve the transfer of administrative support functions to an administrative affiliate. Instead, the transferred function was a profit center that managed enhanced services provided to the public, such as voice mail and electronic messaging. SBC Services will provide its services only to Pacific and to other SBC companies.

²¹ Re Pacific Bell (1996) 69 CPUC2d 206, 210.

²² *Id.* at 210.

²³ Re Pacific Bell (1992) 45 CPUC2d 109, 116.

In the PBIS case, the Commission specified that its decision was based on circumstances that were specific to that application. It further found that Pacific had failed to comply with a Commission directive to exclude ISG's costs from the start-up revenue requirement ordered by the Commission when it adopted the New Regulatory Framework (NRF) for Pacific in 1989. The Commission stated:

(W)e must address the fact that ISG is a valuable business which has had some, if not all, of its expenses paid by ratepayers from 1984 *to the present*, contrary to our stated intention in the NRF decision....

Our decision here resolves challenging issues which we do not want to face again in the future. The matter is one of first impression which Pacific forced upon the Commission by its failure to place costs associated with enhanced services below the line as we ordered it to do in the NRF decision. The NRF decision was not directly helpful in reaching today's decision, because it did not anticipate or address the situation we face today: Pacific's *noncompliance* with the NRF decision's directives concerning which costs it should include in its start-up revenue requirement. Consequently, the decision we reach here today is limited, and not intended to serve as a broad precedent. (45 CPUC2d at 130-31; emphasis in original.)

Pacific contends, and we agree, that the valuation and refund ordered in the PBIS case were, at least in part, a punitive measure based on Pacific's noncompliance with NRF directives. The refund was ordered to resolve issues that the Commission did "not want to face again in the future." After this decision, the Commission never again ordered a going concern valuation and refund in any of its decisions approving Pacific's requests to transfer assets or lease space to affiliates. There is no noncompliance issue with respect to the functions described in the application before us today, nor are the in-house administrative functions comparable to the profit center role of PBIS.

ORA contends that a refund is necessary because ratepayers are at risk for higher rates and lower quality service. Alternatively, ORA proposes a five-year rate freeze until the dust settles on the consolidation. ORA witness Farzad Ghazzagh, senior utilities engineer, testified:

“Pacific does not provide any assurance that the ratepayers will remain indifferent from the transfer of assets. In fact, Pacific has not even performed any studies to estimate any kind of benefits to Pacific from this transfer. Pacific has alleged that this transfer will result in management efficiencies. But the question remaining is: who benefits from these management efficiencies? The only answer available in the documents filed by the applicant is that SBC will benefit from these efficiencies. ORA agrees that the consolidation of the functions could possibly result in efficiency gains at the SBC level, however the transfer of Pacific’s resources out of its direct control may result in a decrease in efficiency levels for Pacific and its ratepayers.” (Exhibit 25, pp. FG-6 and FG-7.)

Pacific’s witnesses testified that, in their judgment, the proposed consolidation likely will have no effect on rates and will improve quality of service by streamlining an internal structure that existed across subsidiary boundaries and included multiple financial systems, complex affiliate billing and other inefficiencies. They contended that, under NRF, Pacific’s rates are delinked from changes in Pacific’s costs with the exception of cost changes due to exogenous events beyond management’s control. Therefore, they argued, ratepayers are not at risk of higher rates due to management’s decision to consolidate support functions in SBC Services.

As discussed earlier, we find merit in ORA’s contention that Pacific has failed to provide adequate assurance that this consolidation of support functions will not affect service to California ratepayers. We have dealt with that concern by imposing requirements for measuring service quality before and after the

formal consolidation. Critics of the consolidation, however, have presented scant evidence of ratepayer risk that would justify a rate refund or an arbitrary rate freeze. In the absence of persuasive evidence, we decline to impose a going concern rate refund or a rate freeze at this time.

Risk of Increased Costs

Pacific's witnesses testified that they are convinced that the consolidation of support services will not mean increased costs for Pacific and will not form any part of a Pacific request for rate increases. On brief, Pacific states that under the new regulatory framework adopted by the Commission a decade ago, Pacific alone bears the risk of its management decisions, and not its customers.²⁴

On cross-examination, however, TURN showed that the application could lead to increased costs for Pacific, and an ORA witness testified that Pacific could seek rate increases through such venues as franchise cost recovery, implementation cost recovery and proceedings to re-categorize services to Category III, which has no rate restrictions. Pacific's witness conceded that no analyses of cost savings had been prepared for this application, and that start-up costs such as internal system changes and reassignment of vendor software agreements cannot now be quantified. Moreover, a Pacific witness acknowledged that the company will lose the 10% premium on several hundreds of affiliate support contracts that now have been transferred from Pacific to

²⁴ In Re Alternative Regulatory Frameworks for Local Exchange Carriers (1989) 33 CPUC2d 43, the Commission discontinued traditional rate-of-return regulation for Pacific and GTEC, substituting the NRF procedure in which rates were adjusted annually based on a price cap formula, a predetermined productivity factor, and the effect on costs of exogenous events beyond the utility's control ("Z factors"). Even with subsequent changes in NRF, Pacific asserts that its prices have been delinked from

Footnote continued on next page

SBC Services.²⁵ The witness added, however, that Pacific also will be relieved of the cost of providing those services.

Given Pacific's assurance that no rate increases are likely to be based on the consolidation of support services, Pacific witness Webb was asked if it would be appropriate for the Commission to make that assurance a condition of approval of the application. He responded:

"I would have a problem with that....This industry is changing so rapidly. It is almost impossible to foresee the future and really be able to determine what costs were associated with this transfer and what costs would be associated with new products and services or mergers and acquisitions. My concern in agreeing to that would be that it would be an administrative nightmare to try to pinpoint the costs that were saved or the increased costs in the hypothetical situation pertaining to this." (Transcript, p. 166.)

TURN's brief concedes the validity of that view, but it argues that it would still be possible to segregate at least some of the costs caused by the transfer of support services. It proposes that Pacific be required as a condition of approval of this application to segregate such costs "to the extent feasible" in any proceeding that would increase consumer rates. TURN argues that such a condition, coupled with ORA's proposal for a going concern refund to ratepayers, would ameliorate the risk that the consolidation of support services could lead to increased costs for Pacific's customers.

changes in costs, with the exception of cost changes due to exogenous events beyond management's control.

²⁵ Under affiliate transaction rules, when Pacific provides a service to an affiliate, it receives revenue equal to its booked cost, plus a 10% premium. As shown by Exhibit 18, there are several hundred separately tracked projects that Pacific was providing for affiliates prior to transfer of these projects to SBC Services.

We are not persuaded that such a condition is necessary. True, Pacific has fallen short of showing with certainty that rates will not be affected by the consolidation of services. But Pacific has shown that a primary reason for consolidation is increased efficiency, which presumably translates into lower costs for the parent company and its subsidiaries. The NRF procedure is intended to place the risk of management decisions like this one on shareholders, rather than on ratepayers, and for the most part we believe that protection is formidable. And, as Pacific points out, any application intended to increase rates through re-categorization or other means is subject to Commission review and to challenge by other parties. For these reasons, and on the basis of the record as a whole, we decline to condition our approval of the application on a hold-harmless rate provision.

Nondiscriminatory Access by Competitors

WorldCom/AT&T allege that transferring support services for Pacific's operations support systems (OSS) to SBC Services is a ruse to permit Pacific's parent to discriminate against competitive carriers like WorldCom and AT&T in California. Witness Terri McMillon, OSS project manager for WorldCom, testified that because SBC Services will not be subject to Commission regulation, it will be able to provide inferior service to Pacific, which in turn will provide inferior OSS to competitive carriers in California. Meanwhile, she stated, SBC Services is free to provide more comprehensive OSS support to SBC companies in other states where there may be less competition for local exchange service.

ORA witness Victoria Kolakowski, regulatory analyst, testified that transfer of the OSS support personnel to a non-regulated affiliate is likely to reduce the ability of the Commission and other carriers to monitor the support

being provided to Pacific and other SBC local exchange carriers. She testified that Pacific has spent \$100 million to develop OSS software and personnel expertise, an amount that Pacific is seeking to recover in another proceeding,²⁶ and yet will transfer much of this personnel expertise to benefit SBC operations in other states. ORA asserts that Pacific has failed to provide any enforceable commitments that the transfer of billing support, one of the five key OSS functions, and OSS interface functions to a non-regulated entity will not impair competition in California.

Pacific responds that its OSS is not being transferred to SBC Services. Ownership of the software used to provide OSS remains with Pacific, and Pacific personnel responsible for providing OSS to competitive local exchange carriers are not among the employees who are being transferred. Pacific witness Glen Sirles, vice president, OSS, for SBC Services, testified that his staff, operating across subsidiary lines, will continue to provide OSS support in the same manner that was in effect prior to the transfer considered here.

Pacific witness Kathleen Larkin, director-regulatory issues for Southwestern Bell Telephone Company, testified that SBC Services, as an administrative affiliate to Bell operating companies, will be subject to an FCC biennial audit under Section 272(d) of the Telecommunications Act of 1996 (Act). Pacific also represented that if it had provided a support function to a Section 272 affiliate, and if that function subsequently was transferred to SBC Services, Pacific would post that transaction on the Internet and make the service available to others for one year after the transfer takes place.

²⁶ Local Competition Implementation Cost Recovery, R.95-04-043/I.95-04-044.

On brief, Pacific argues that it continues to be subject to the nondiscrimination requirements of the Act in providing access to its OSS. Moreover, it states that it will have to prove that it has met its OSS obligations as part of the “competitive checklist” requirements of the Act,²⁷ and this Commission’s Section 271 “roadmap”²⁸ before Pacific can be authorized to provide long distance service. As part of the roadmap, Pacific states that it and other carriers, along with the Commission’s staff, have developed and are implementing formal OSS Performance Measures, an OSS Master Test Plan and an OSS Change Management Process, which provide the means by which the Commission ensures that Pacific is meeting OSS obligations. Pacific states that nothing in this application changes those requirements.

Much of the concern of WorldCom/AT&T centered on an SBC Services slide presented to the SBC board of directors in 1999 as part of a presentation justifying Project 2000. The slide, first produced by TURN as part of its discovery, states that the transfer of support functions to the new entity will:

“Allow SBC Services to offer services to 272 affiliate on a discriminatory basis.”²⁹

²⁷ See 47 USC § 271(c)(2)(B), requiring that a Bell operating company like Pacific must provide nondiscriminatory access to its network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1).

²⁸ Rulemaking on the Commission’s Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks and Related Matters, D.98-12-069 (December 17, 1998).

²⁹ Exhibit 22, p. 12. The slide, part of a seven-page package, is entitled “Address Regulatory Issues.” In addition to the “discriminatory basis” statement, the slide contains two other assertions: “Eliminate affiliate billing requirements” and “Eliminate regulatory complexity and confusion (along with the accompanying overhead).”

The witness for WorldCom/AT&T alleged that this entry “documents that one of the purposes behind the transfer of OSS to SBC Services is to allow SBC Services to discriminate in favor of its affiliate....”³⁰ Pacific’s witness Webb, the author of the statement, acknowledged that the statement “was poorly worded,”³¹ but he defended it as simply stating that the Section 272(c) nondiscrimination requirements for Bell operating companies do not apply to a shared services affiliate. Accordingly, he said, if SBC Services provided programming support for a long-distance affiliate, it would not be required by the Act to provide that same development service for any other SBC affiliate. On the other hand, he added, services available to Pacific and to Pacific’s long distance affiliate would have to be available to competitors through Pacific on a nondiscriminatory basis.

WorldCom/AT&T urge that the Commission, if it approves this application, impose conditions on the transfer that would require SBC Services to stipulate that, in effect, it would be subject to the same OSS disclosure requirements that are required for Pacific. ORA joins in those recommendations, urging also that a means be devised to test OSS services before and after the consolidation.

The record demonstrates that Pacific will continue to own its OSS, and the use of an administrative affiliate to provide support services will not change Pacific’s legal obligation to provide access to its OSS to competing carriers. Further, Pacific through its witnesses has shown that the application before us will not change the method of access, the system application or any functionality

³⁰ McMillion testimony, Exhibit 22, p. 12.

³¹ Transcript, p. 140.

available in the OSS interfaces for competitive local exchange carriers to use, nor the way that they utilize OSS interfaces to request and process orders. Pacific will continue, as before, to be subject to the OSS Performance Measurements, the OSS Master Test Plan and the OSS Change Management Process, and, of course, the entry of Pacific's long distance affiliate into the long distance market is dependent on Pacific's meeting its OSS obligations.

The concerns of WorldCom/AT&T and ORA with respect to OSS are speculative, and there is no evidence that the consolidation of the support functions – which has been in place since January – has disadvantaged competitive carriers in California. However, we understand the potential for inherent abuse. For that reason, we will require as a condition of approval the commitment that Pacific has voluntarily made. That commitment is that, if Pacific has provided a support service to a Section 272 affiliate, and that support service has been transferred to SBC Services, Pacific will continue to make the service available to competitive local exchange carriers on a nondiscriminatory basis for a period of one year beyond the expiration of the term of the agreement under which Pacific provided the service to its Section 272 affiliate.

Discovery Commitment

Witnesses for Greenlining and TURN contend that the transfer of any of Pacific's billing records from California to Texas, and the assignment of billing duties to SBC Services personnel in other states, will impede discovery in matters arising before the Commission and the courts. TURN stated that its ability to obtain Pacific's billing records and conduct other discovery enabled it to persuade the Commission in 1993 to order Pacific to refund \$34 million in

overcharges and pay \$15 million in civil penalties.³² Greenlining points out that it is Pacific's position that SBC Services is an unregulated service affiliate, not subject to the jurisdiction of this Commission, and therefore not as likely as Pacific to respond to discovery requests in Commission proceedings.

Pacific's witnesses responded that SBC Services, as an administrative affiliate, will only provide data processing and other support services to Pacific and other entities within the SBC organization. Pacific will retain ownership of its retail Pacific Billing and Collection Services. They stated that the Commission will continue to have full authority to inspect the accounts, books and documents of SBC Services with respect to any transaction with Pacific that might affect the interests of Pacific's customers. Pacific witness Webb added:

"In addition, Pacific has made the following commitment: In matters before the Commission, Pacific will commit that the Commission, as well as interested parties, will have the same access to information and ability to conduct discovery as they did prior to approval of Pacific's application. Pacific is not waiving its right to object to requests for information that would be inappropriate even if the support services were not transferred to SBC Services." (Exhibit 2, at 3.)

Pacific declined to make the same commitment for civil court actions, and maintains that this Commission lacks jurisdiction to condition approval of this application on changes in discovery procedures and its rights in judicial proceedings. Pacific states that the Legislature has prescribed such court

³² TURN v. Pacific Bell (1993) 49 CPUC2d 299, as modified by D.94-04-057, 54 CPUC2d 122.

procedures in the Code of Civil Procedure, § 34, and it has not delegated to the Commission the authority to require a utility to agree to changes in that code.³³

We agree with Greenlining and TURN that important discovery rights before this Commission can be impeded if Pacific elects to use SBC Services as a shield for internal documents and personnel. On the other hand, we note that the Commission has full statutory authority under Pub. Util. Code § 314(a) to inspect the records of SBC Services with respect to any transaction between Pacific and SBC Services in matters where ratepayers could be affected. Specifically, Section 314(b) of the Code specifies that the authority in § 314(a):

”Also applies to inspections of the accounts, books, papers, and documents of any business which is a subsidiary or affiliate of, or a corporation which holds a controlling interest in, an electrical, gas, or telephone corporation with respect to any transaction between the electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the electrical, gas, or telephone corporation.”

Moreover, Pacific’s commitment to give parties the same access that they had prior to the consolidation resolves most of concerns with respect to discovery in Commission proceedings. We will make Pacific’s commitment a condition of our approval of the application. We are not persuaded, however, that this Commission should intrude on parties’ discovery obligations in judicial proceedings, and we decline to do so.

³³ TURN responds that its proposal would simply give court litigants the opportunity to file a complaint with the Commission if Pacific resisted pre-consolidation discovery in the court proceeding. (TURN Reply Brief, at 8.)

Subsequent Transfers of Leased Space

Pacific in its application asks the Commission for authority to lease the space identified in this proceeding to an administrative affiliate other than SBC Services if that other affiliate assumes the administrative support functions described in the application.³⁴ Pacific's witness testified that the request is limited to transfers in which the terms and conditions of existing leases would be assumed by the new entity. The witness testified that the requested authority is intended simply to avoid the need for Pacific to file another Section 851 application and for the Commission to unnecessarily repeat its review of leases merely because of a change in the identity of the administrative affiliate performing the services.

We need not tarry long with this request. As ORA points out, the Commission has on two occasions recently declined similar requests by Pacific. (Application of Pacific Bell for an Exemption Pursuant to Section 853(b) (1996) 69 CPUC2d 206, 209; Re Pacific Bell (1995) 59 CPUC2d 237.) In Application of Pacific Bell, 69 CPUC2d at 209, we stated:

“The increasing competition in electric and telecommunications services does not in itself justify exempting either electric or telecommunications utilities, as a class, from the requirements of § 851. Indeed, in such an environment, transfers between a utility and its affiliates may raise concerns about competitive impacts, beyond the traditional regulatory concern that the utility receive appropriate compensation for the transferred property.”

Pacific argues that the § 851 process can take many months. ORA responds that Pacific under G.O. 69-C may enter into revocable license

³⁴ Application, pp. 2, 4.

agreements – as it has done in this case – that would transfer a lease immediately pending Commission approval of a more permanent arrangement under § 851.

Pacific has presented us with no compelling reason to make an exception to the Section 851 process, and we decline to do so.

Comments to Application

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments are to be filed within 20 days of the date of mailing, with reply comments due five days thereafter. (See, generally, Rules 77.2 - 77.5.)

In Resolution ALJ 176-3030, dated July 22, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. In the Scoping Memo dated November 5, 1999, it was determined that a hearing would be required. Our order today changes the preliminary designation to note that a hearing was required.

Findings of Fact

1. Pacific is California's largest telecommunications company and is regulated by this Commission.
2. Pursuant to Pub. Util. Code § 851, Pacific proposes to lease space in 155 different California locations and to transfer approximately \$878 million in computer hardware, office equipment and other assets to SBC Services.
3. SBC Services is an unregulated subsidiary of Pacific's parent company, SBC, and an administrative affiliate of Pacific and other SBC companies.

4. The support functions that would be transferred to SBC Services include information technology and billing support, real estate support, procurement support, human resources support, and training services.

5. The leased space and assets were transferred to SBC Services on or about January 1, 2000, under revocable licenses and leases which Pacific asserts are authorized by G.O. 69-C.

6. Approximately 5,000 Pacific employees have transferred to SBC Services as part of the administrative support transfer.

7. Pacific states that there are no specific plans to permanently transfer any of the current support operations from California to other states.

8. Under the Commission's affiliate transaction rules, Pacific will receive approximately \$47 million through payment of a 25% transfer fee for transferred Pacific employees.

9. Under the Commission's affiliate transaction rules, Pacific will receive the higher of fully distributed cost plus 10%, or market value, for leased space.

10. Under the Commission's affiliate transaction rules, Pacific will receive the higher of market price or net book value plus incremental transaction costs for the \$878 million in transferred assets.

11. Oversight of these affiliate transactions is centralized in the SBC Affiliate Oversight Group, which files affiliate transaction data with the Commission and with the FCC.

12. Pacific states that performance of support functions by administrative affiliates will enable the company to achieve efficiencies by sharing the cost with other organizations and by avoiding duplication.

13. Since the 1997 merger with SBC, the average time Pacific customers wait for installation of new service has increased by 16% and the average wait for residential repairs has increased by 70%.

14. Under the General Services Agreement with Pacific, SBC Services will be the entity that decides if it has provided satisfactory service to Pacific.

15. Pacific valued the space and assets in its application based on an item-by-item assessment in a manner approved by the Commission in previous decisions.

16. Pacific will lose the 10% premium on several hundreds of affiliate support contracts that now have been transferred from Pacific to SBC Services.

17. Under the consolidation, Pacific will be relieved of much of the cost of providing affiliate support to other entities.

18. Ownership of the software used to provide OSS is not being transferred to SBC Services.

19. Pacific personnel responsible for providing OSS to competitive local exchange carriers are not among the employees who are being transferred.

20. SBC Services as an administrative affiliate to Bell operating companies will be subject to an FCC biennial audit.

21. Pacific commits that if it had provided a support function to a § 272 affiliate, and if that function subsequently was transferred to SBC Services, Pacific will post that transaction on the Internet and make the service available to others for one year after the transfer takes place.

22. Pacific will continue to be subject to the nondiscrimination requirements of the Act of 1996 in providing access to OSS.

23. SBC Services in a presentation to the SBC board represented that an advantage of consolidation is that it will permit SBC Services to serve a § 272 affiliate on a discriminatory basis.

24. Pacific commits that, in matters before the Commission, the Commission and parties will have the same access to information as they did prior to the consolidation of support services.

25. Pacific seeks authority to lease the space identified in this proceeding to another administrative affiliate without prior approval by this Commission.

Conclusions of Law

1. Pacific's application is made pursuant to § 851 of the Pub. Util. Code, which requires prior Commission approval of leases and transfers to other entities.

2. No remedial action is warranted as to the use of G.O. 69-C in effecting the transfers requested in this application prior to Commission approval.

3. Pacific has failed to meet its burden of showing that consolidation of support services in an unregulated affiliate will not have a deleterious effect on installation and repair service in California.

4. Pacific should be required to track and report on installation and repairs so that the Commission can monitor service quality.

5. Pacific has complied with Commission requirements in valuing the space and assets relevant to this application.

6. The evidence does not justify a valuation of functions as going concerns, nor does the record justify a rate refund or rate freeze at this time.

7. Pacific is subject to NRF, one purpose of which is to place the risk of management decisions on the company instead of on the ratepayer.

8. Any application by Pacific intended to increase rates through re-categorization or other means is subject to Commission review and to challenge by other parties.

9. The Commission should not require a hold-harmless revision on rate increases based on costs incurred in this application.

10. There is no evidence that the consolidation of support functions has disadvantaged competitive carriers in California.

11. The Commission in its order should memorialize as a condition Pacific's commitment to provide for a fixed period of time support service to local competitive exchange carriers where such support service has been provided to a 272 affiliate of Pacific.

12. The Commission in its order should memorialize as a condition Pacific's commitment to make discovery available in Commission proceedings in the same manner as was available prior to the consolidation of support services.

13. The Commission should deny that part of the application seeking approval of certain space leases in the future without § 851 approval.

14. Subject to the conditions set forth in our order, Pacific should be authorized to enter into the leases and transfers of assets set forth in the application, as such application was amended on October 13, 1999, and February 3, 2000.

15. Pacific should be required to notify the Telecommunications Division when the leases and transfer documents have been executed.

16. Resolution ALJ 176-3030 should be changed to show that a hearing was required.

17. This order should be made effective immediately in order that the arrangements can be implemented promptly.

O R D E R

IT IS ORDERED that:

1. Pacific Bell Telephone Company (Pacific) is authorized, pursuant to Section 851 of the Public Utilities Code, to enter into the space lease and asset transfer arrangements with SBC Services, Inc., as set forth in Exhibit A and Exhibit B of the application, on the terms and conditions set forth in the

application, as such application has been amended effective October 13, 1999, and February 3, 2000, subject to the conditions set forth below.

2. As a condition of the authorization granted herein, Pacific within 60 days of the effective date of this order shall begin to provide the Commission with the data necessary for Commission staff to monitor and analyze Pacific's service quality performance with respect to installation and repair service. Pacific is directed to retain the records necessary for the Commission to verify reported installation and repair intervals. At a minimum, Pacific shall maintain records of all residential and small business installations and repairs. Such information shall include a listing of all installations and repairs carried out for residential and small business services, respectively, and presented by type of service. The following information shall be recorded for each installation: the month/year of the report, account number, wire center code associated with the account, date of the order, date of commitment, date of and reason for decisions to alter date of commitment, date installation/repair was completed, and whether installation/repair was referred to cable maintenance because of a "no facilities condition." Pacific shall archive this information on data compact disks and retain it for five years. The information shall be provided to the Telecommunications Division and to the Office of Ratepayer Advocates on computer disk on a quarterly basis.

3. As a condition of the authorization granted herein, Pacific within 60 days of the effective date of this order shall develop a service performance guarantee similar in scope to that set forth in Rule No. 18 (Service Performance Guarantee for Residential Customers) and Rule No. 19 (Service Performance Guarantee for Business Customers) of GTE California Incorporated, Advice No. 5521, SCHEDULE Cal. P.U.C. No. D&R, 8th Revised Sheet 49, and SCHEDULE Cal. P.U.C. No. D&R 6th Revised Sheet 50. The service performance guarantee shall

be delivered in writing to the Telecommunications Division and, after approval thereof by the Telecommunications Division, shall be implemented immediately thereafter.

4. As a condition of the authorization granted herein, Pacific shall within 30 days of the effective date of this order post on its Internet site its commitment that if Pacific has provided a support service to a Section 272 affiliate, and that support service has been transferred to SBC Services, Inc., Pacific will continue to make the service available to competitive local exchange carriers on a nondiscriminatory basis for a period of one year beyond the expiration of the term of the agreement under which Pacific provided the service to its Section 272 affiliate.

5. As a condition of the authorization granted herein, Pacific is directed to perform the following commitment: In matters before the Commission, Pacific commits that the Commission, as well as interested parties, will have the same access to information and ability to conduct discovery as they did prior to approval of Pacific's application; provided, however, that Pacific does not waive its right to object to requests for information that would be inappropriate even if the support services were not transferred to SBC Services, Inc.

6. Pacific's request in the application, for authority to lease the space identified in this application to an administrative affiliate other than SBC Services, Inc., if that other affiliate assumes the administrative support functions described in the application, is denied.

7. Pacific shall notify the Director of the Telecommunications Division, in writing, when the lease and transfer agreements authorized herein have been executed, and shall state at that time whether the agreements conform to the Commission's affiliate transaction rules.

8. Resolution ALJ 176-3030 is amended to show that a hearing in this matter is required.

9. Application 99-07-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

Proceeding: A9907020 - PACIFIC BELL - LEASE

Filer: PACIFIC BELL

List Name: LIST

Last changed: December 2, 2003

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(END OF ATTACHMENT)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Asking Parties to Update Draft Proposed Decision on all parties of record in this proceeding or their attorneys of record.

Dated February 2, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.